FEDERAL ELECTION COMMISSION
Washington, DC 20463

DISSENTING OPINION IN ADVISORY OPINION 1982-14

of

COMMISSIONER THOMAS E. HARRIS

I think that the proposed corporate contributions to the "Michigan Republican State Committee" are not permissible under the Act.

Contributions to be used to devise and support a particular congressional reapportionment plan, and oppose others, initially in the legislature and ultimately, perhaps, via litigation, are banned by the literal language of 441b. They are contributions "in connection with" a federal election. 441b(a). They are likewise a "payment" or "gift" to a "political party or organization, in connection with" a federal election. 441b(b)(2). While various exceptions to these broad prohibitions have been carved out in the statute itself, by Commission regulations and by advisory opinions (improperly, in my judgment, as respects advisory opinions), no exception sanctioning donations of the sort proposed has heretofore been recognized.

On this issue, as on all questions of statutory construction, we should be guided by the intent of Congress. That intent may be manifested by the language of a statute, or by legislative history showing or suggesting that Congress explicitly considered the question and intended a particular resolution of it, or by looking to the broad policy considerations which Congress sought to implement through the legislation.

The language of the statute, as shown above, bans the proposed corporate donations.

The legislative history of the Act and its predecessors discloses no explicit consideration by Congress of corporate (or union) contributions to party organizations for Congressional redistricting fights. The general remark by Representative Hanson in 1971, that this Act does not cover lobbying, which is "regulated separately," was but a statement of the obvious, and can hardly be regarded as revealing any concrete intent one way or the other vis-a-vis corporate contributions for redistricting contests.

Congressman Hanson also remarked that:

"(T)he underlying theory of Section 610 is that substantial general purpose treasuries should not be diverted to political purposes, both because of the effect on the political process of such aggregated wealth and out of concern for the dissenting member or stockholder." 117 Cong. Rec. 43379

As far back as 1948 the Supreme Court posited the same rationale for what is now 441b. It stated:

This legislation seems to have been motivated by two considerations. First, the necessity for destroying the influence over elections which corporations exercised through financial contribution. Second, the feeling that corporate officials had no moral right to use corporate funds for contribution to political parties without the consent of the stockholders. United States v. CIO, 335 U.S. 106,113 (1948)

Both of these considerations apply to the present issue. There may be stockholders who do not want general treasury monies to be donated to lobby or litigate reapportionment plans. And corporate donations for those purposes are as effective for influence buying as direct candidate contributions are.